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IN THE

Supreme Court of the United States

MAY TERM, A. D. 1947.

No. 1338

RAYMOND DE FILIPPIS,

Petitioner,

vs.

CHRYSLER CORPORATION, CHRYSLER SALES CORPORATION,
STUDEBAKER CORPORATION, STUDEBAKER SALES CORPORATION
OF AMERICA, NASH-KELVINATOR CORPORATION, BORG-WARNER
CORPORATION AND BORG-WARNER SERVICE PARTS COMPANY,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

✓ MAX W. ZABEL,

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EDWARD U. DITHMAR,
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**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.**

I. Petitioner Raises Only Questions of Fact.

As we read the petition for certiorari, Petitioner seemingly bases his contentions upon a plea that the *fact questions* of this cause be studied *de novo* by this Court.

In addition to his plea for re-examination of the fact questions, Petitioner sets forth a number of contentions based upon propositions of law, seemingly to suggest that the case presents substantial law questions. Respondent respectfully asserts the complete absence of any questions of law, and, to substantiate this contention, calls attention to the fact that Petitioner himself, on page one of his ap-

pellant's brief in the Court of Appeals¹ stated, "There is no substantial dispute with respect to the applicable law."

As apparent from its opinion (R. 356), the District Court fully recognized the right to recover under the various doctrines of confidential disclosure, unjust enrichment, implied contract and the like, but found that the *structures* involved were such that Petitioner's disclosure (in addition to representing nothing of novelty upon which relief could be granted) was not embodied in the Respondent's devices. In other words, the established facts as to the *structures* of the respective parties foreclosed possibility of recovery under the various doctrines above enumerated.

The quite elaborate opinion of the District Court (R. 356) shows complete familiarity with the rather complicated *mechanical* features here under consideration. The Court of Appeals opinion (R. 391) shows further study and understanding as to these mechanical features by discussing certain of them in even greater detail than did the District Court.

The evaluation of these facts does not and could not depend upon the deposition of any witness because such evaluation depends *entirely* upon documentary evidence and stipulated mechanical exhibits.

The fact questions here involved needed no evidence of witnesses except to explain the working of the exhibits in the first instance. These fact questions related solely to *mechanical* features apparent from the disclosure itself, the physical exhibits and pertinent prior art patents. No abstruse or hidden questions relating to chemistry, electricity, or the like are here involved, merely the mechanical

¹ Appellant's Court of Appeals brief has been included in the Transcript of Record served on Respondent with the Petition.

operation of parts before the Court, and disclosures in prior patents.

Two terms have been used extensively herein which, if not clearly defined at the outset, might possibly lead to confusion. These terms are "overrunning" and "overdriving" (Finding 8, R. 372).

The term *overrunning* is synonymous with free-wheeling, and it contemplates a connection between drive and driven shafts whereby, if the automobile is coasting, the driven shaft (connected to the rear wheels) is *permitted* to rotate faster than (overrun) the drive shaft (connected to the engine). When the car speed drops to correspond with engine speed, a driving relationship is established whereby the drive shaft drives the driven shaft and thus the automobile.

The term *overdriving* contemplates a connection between drive and driven shafts whereby the two shafts are connected together in such a manner (usually by gears) that the driven shaft is *driven* faster than the speed of the drive shaft. In Respondent's overdrive devices the driven shaft makes ten revolutions for every seven revolutions of the drive shaft (a 7:10 drive ratio).

II. Comments on Petitioner's "Reasons for Granting the Writ."

The "Reasons" appear on pages 24 through 31 of the Petition.

Reason 1 clearly bears out our contention that the plea is based primarily upon a request for reconsideration of the fact questions that have been presented, argued and determined in the two courts below.

Reason 2 does not warrant serious consideration because Petitioner is on record following the decision of the District

Court that "There is no substantial dispute with respect to the applicable law." The decision of the Court of Appeals affirming the District Court raises no questions of law that we can perceive to justify Petitioner's reversal of position in this respect.

Reason 3, like Reason 1, merely requests re-examination of the evidence to the end that the fact findings of the courts below will be set aside.

Reason 4, and other statements in the Petition to the effect that the Court of Appeals erred in stating that "No claim is made for the principle of overdrive," is, in our opinion, based upon a clear misinterpretation by Petitioner of the Court's language. Petitioner sees in the statement a question of pleading, and Reason 4 seems to be formulated accordingly. We see no basis for this interpretation. Quite obviously the Court of Appeals, following a careful and detailed study of the device described by Petitioner, is stating *as a fact* that the description did not set forth or contemplate the principle of overdrive. Such a principle is not mentioned in the description (the only grounds upon which relief could be granted). The "ultimate" drive relationship between the drive and driven shafts is termed in the description as a "direct connection," and that means the two shafts rotate at the same speed. The description states (R. 308, line 10), "From neutral, the (driven) shaft may be actuated for low speed or reverse or the shaft may be *direct connected* to the engine for *high speed* * * * ." (Emphasis ours). At another place (R. 312, second paragraph), the description states "For direct connection, the driven shaft 31 is moved toward the right, with parts in position III, in which the driven shaft is connected to a driving shaft 11a by any suitable clutch 48." Thus no speed beyond "direct connection," such as

overdrive, is contemplated by the disclosure (Finding 13, R. 373). That being true, how could the principle of overdrive possibly be the basis of a valid *claim*?

Reason 5 presupposes that the controlling facts determined by the courts below are in error, i. e. the findings that Petitioner's disclosure wholly lacked novelty (insofar as the features thereof that are here put in issue are concerned) and that the disclosure was not embodied in Respondent's devices. In the light of these definite findings of ultimate fact, there is complete harmony between the holding of the Court of Appeals and the prior decisions cited by Petitioner.

Reasons 6 and 7 are merely general prayers for relief. In a word, Petitioner's "Reasons" may be summarized as a request that the Court review this case for the mere purpose of re-examining the correctness of the result. Such is not the province of certiorari as we understand it. In the words of Chief Justice Taft, "The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing," especially when such a hearing revolves around purely *mechanical fact questions*.

III. Other Pertinent Comments on Petition and Brief.

1. Referring to the caption, Borg-Warner Corporation is the *sole* Respondent herein. The complaint as to the other named defendants was dismissed at the trial (R. 176) in an unappealed from ruling.
2. Of the four causes of action enumerated by Petitioner on page 2, two of them, fraud and conspiracy, were dismissed at the trial (R. 180) in an unappealed from ruling.
3. As heretofore pointed out, the established facts have twice been held to prove that Respondent's devices are not

in any sense of the word an appropriation of Petitioner's "invention."

4. The description submitted in 1931 by Petitioner to Respondent (Exhibits 3b and 3c, R. 304-314) was nothing more nor less than a copy of a *patent application* filed by Petitioner in the United States Patent Office on June 11, 1929. The application matured into patent No. 1,968,030 on July 31, 1934. This patent presumably is a measure of any "invention" contained in the description submitted.

5. Petitioner has heretofore unsuccessfully urged said Patent No. 1,968,030 with respect to the *same* devices complained of here. The patent suit was defended by Respondent, Borg-Warner Corporation, to the knowledge of Petitioner (R. 346). *De Filippis v. Chrysler Sales Corporation*, 116 F. 2d 375 (two appeals) and 127 F. 2d 530. Thus patent infringement has been adjudicated adversely to Petitioner, although, because of certain equities present, the case was dismissed and final judgment was entered without need for a trial.

6. We do not agree with the description of Petitioner's device appearing on page 5 of the Petition. Petitioner's device is described in Exhibits 3b and 3c (R. 304-314), the submitted description. No later words of Petitioner or his counsel can possibly change the character of this device. There is absolutely no thought of overdriving expressed in that description.

7. The Court of Appeals (R. 392) concisely sets forth the *elements* Petitioner himself contends are present in his device and in the device of Respondent. They are four in number. Now, on page 6 of the Petition, Petitioner adds a *fifth* element to the original four. This fifth element deals with *overdriving*, the very thing the Court of Appeals had in mind when it said "No claim is made for the principle

of overdrive.” Basis for this statement by the Court of Appeals, in addition to the description itself, is Petitioner’s own contention before that Court. In this respect Petitioner now seems to have unwarrantedly changed his position.

8. Petitioner’s device is supposed to be a clutchless, gearless transmission (R. 135, 301, 306). Respondent’s device uses nothing but gears and clutches and the necessary shafts (R. 135, 349, 350, 354).

9. On pages 16, 17 and 18 Petitioner assails certain fact findings of the District Court. These facts, each supported by substantial evidence in the record, concisely demonstrate the groundless nature of Petitioner’s charges.

10. Pages 20 through 24 contain some twenty-six “Questions Presented.” We do not desire to prolong this reply by discussing each one individually. However, we would like to say that every one of these questions is based upon Petitioner’s unwillingness to accept the *facts* found by the courts below. Some of the questions presuppose the existence of facts different from those found, while other questions specifically challenge the accuracy of definite fact findings. These questions would be presented *only* if the facts established that Petitioner had submitted something (1) *possessing novelty* and (2) Respondent had *used* that something. For this reason we respectfully contend that these questions are not here in issue.

11. A great deal is said about the sufficiency of evidence in support of one statement found in the decision of the Court of Appeals. Petitioner seems to question (at this late date) the fact that Respondent in 1930 manufactured a free-wheeling (overrunning) transmission having a manual lockout (or cutout) to direct connect the drive and driven shafts (sometimes called by Petitioner a “positive non-

overrunning connection’’). In addition to the blueprint, Exhibit R (R. 352) and the testimony of Mr. White (R. 208-210), Petitioner himself admitted (R. 156, 157) at the trial that free-wheeling with a lockout was *prior art* to him. The District Court made such a finding (Finding 11, R. 372), and it has never before been questioned by Petitioner.

12. The *only element of novelty* contended for by Petitioner in behalf of his device is a *governor* adapted to actuate the prior art free-wheeling lockout and thus establish a “positive non-overrunning connection” between the drive and driven shafts (R. 157, 158). The description submitted shows no such governor. This fact was definitely found by both courts below (R. 367, 394). The absence of this one single alleged element of novelty was, among other equally decisive contentions, held by both courts to require dismissal of the complaint. As to this, Petitioner now (Petition, page 8) seems to acknowledge the obvious fact that such a governor was not comprehended in his description. He now seems to predicate his claim to novelty solely upon “the sliding of the shafts,” irrespective of the means shown to accomplish such sliding. And in the last full paragraph on page 8 Petitioner seems to advance the all-embracing contention that he “covered every means of effecting the connection” between a drive and driven shaft. Obviously Petitioner was not the first to connect drive and driven shafts together. This admittedly was done in the prior art free-wheeling devices (R. 352), as well as in many other prior art power transmission devices.

CONCLUSION.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ of certiorari should be denied.

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